APPEAL NO. 010181

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 18, 2000. The hearing officer held that the appellant's (claimant) unemployment was the direct result of his impairment, but that he did not qualify for his first quarter of supplemental income benefits (SIBs) because he did not search for work commensurate with his ability to work.

The claimant appeals and argues that there are numerous medical records and narratives showing that he lacked the ability to work for the filing period under review. The respondent (carrier) responds that the decision is supported by the evidence.

DECISION

We affirm the hearing officer's decision.

The hearing officer did not err in finding that the claimant did not submit a narrative report from his doctor that described how his impairment resulted in the complete inability to work. The legislature has required that in order to qualify for SIBs, an injured worker must attempt "in good faith to obtain employment commensurate with the employee's ability to work." Section 408.142(a)(4). This is not measured by whether a worker may return to his original work, but by the physical ability to work. This will also not mean in every case that a worker can return to only full-time, as opposed to part-time, work.

In rare cases, proof of a complete inability to work at any job, and therefore no search, can fulfill the "good faith" requirement. The Texas Workers' Compensation Commission (Commission), through Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)), has provided:

> Good Faith Effort. An injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee:
>
> > (4) has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work[.]

While the claimant argues that this poses "an impossible burden," it does not. This provision simply requires a medical doctor to write a report responsive to how the work-related injury would prevent, from a functional standpoint, even a part-time, sedentary inability to work. The Commission has made clear that more than a simple "off work" declaration is needed before an inability to work can be found.

In this case, the claimant testified that neither his treating doctor, Dr. M, nor his pain management doctor, Dr. O, had discussed with him one way or the other whether he could work, and that Dr. M never told him he could not work. His injury was a hernia and groin injury and apparent nerve entrapment. The claimant said that during the qualifying period, which ran from May 15 through August 13, 2000, he was in therapy with Dr. M three times a week. The claimant began attending classes in September 2000 to achieve his GED.

A functional capacity evaluation test was performed on September 12, 2000, and while it was concluded that he was unable to return to his previous heavy-duty work, he had an ability within the "light" duty category. Dr. M relayed this information in a "To Whom It May Concern" letter a week later. On November 20, 2000, Dr. M wrote that the claimant "was not able to work" from November 1999 through January 2000, although that letter only goes on to say that the claimant was receiving care at his clinic.

Considering the evidence, we find that the hearing officer's decision is sufficiently supported by the evidence and affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Michael B. McShane
Appeals Judge